

ESTTA Tracking number: **ESTTA756401**

Filing date: **07/05/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	BBK Tobacco & Foods, LLP d/b/a HBI International
Granted to Date of previous extension	07/20/2016
Address	3401 W Papago St Phoenix, AZ 85009 UNITED STATES

Attorney information	Brendan N. Mahoney, Esq. 3401 West Papago Street Phoenix, AZ 85009 UNITED STATES legal@hbiin.com Phone:602-374-7482
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Applicant Information

Application No	86609635	Publication date	03/22/2016
Opposition Filing Date	07/05/2016	Opposition Period Ends	07/20/2016
Applicant	Joshua J. Beaumont 1321 W. Tonia Lane Anaheim, CA 92802 UNITED STATES		

Goods/Services Affected by Opposition


Class 034. First Use: 2015/02/07 First Use In Commerce: 2015/02/07 All goods and services in the class are opposed, namely: handheld vaporizers for producing an inhalable aerosol, and parts and fittings therefor
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
The mark is primarily merely a surname	Trademark Act Section 2(e)(4)

Marks Cited by Opposer as Basis for Opposition


U.S. Registration No.	2992489	Application Date	07/15/2004
Registration Date	09/06/2005	Foreign Priority Date	NONE
Word Mark	JAY'S		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2000/06/19 First Use In Commerce: 2000/06/19 Tobacco and tobacco accessories, namely, rolling papers [, rolling machines, cigarettes, cigars, pipes]		

U.S. Registration No.	4330757	Application Date	05/21/2012
Registration Date	05/07/2013	Foreign Priority Date	NONE
Word Mark	COOL JAY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 1999/06/01 First Use In Commerce: 1999/06/01 Cigarette rolling papers [; Matches; Tobacco pipes]		

U.S. Registration No.	2678289	Application Date	03/22/2002
Registration Date	01/21/2003	Foreign Priority Date	NONE
Word Mark	JUICY JAY'S		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 1999/06/06 First Use In Commerce: 1999/06/06 Tobacco and tobacco accessories, namely, rolling papers, [rolling machines, cigarettes, cigars,] matches [, pipes]

U.S. Registration No.	3876971	Application Date	04/08/2010
Registration Date	11/16/2010	Foreign Priority Date	NONE
Word Mark	JUICY JAY'S		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/06/29 First Use In Commerce: 2000/06/29 Tobacco and Herbal Smoke masking incense		

Attachments	78451355#TMSN.png(bytes) 85630791#TMSN.png(bytes) 85009891#TMSN.png(bytes) Jay Bo notice of opposition.pdf(64659 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Brendan Mahoney/
Name	Brendan N. Mahoney, Esq.
Date	07/05/2016

Mark	Class and Goods & Services	Serial No.	Reg. No.	File Date	First Use	Reg. Date
JAY'S®	034 - Tobacco and tobacco accessories, namely rolling papers	78-451355	2992489	7/15/2004	6/19/2000	9/6/2005
COOL JAY'S®	034 – Cigarette rolling papers	85-630791	4330757	5/21/2012	6/1/1999	5/7/2013
JUICY JAY'S®	034 - Tobacco and tobacco accessories, namely rolling papers, matches	78-116781	2678289	3/22/2002	6/6/1999	1/21/2003
JUICY JAY'S®	003 - Tobacco and Herbal Smoke masking incense	85-009891	3876971	4/8/2010	6/29/2000	11/16/2010

2. Opposer uses, and has used, and continues to use Opposer's Registered Marks to identify the goods identified in the registrations for Opposer's Registered Marks.

3. Opposer itself, or through its predecessor, has used, Opposer's Registered Marks in U.S. interstate commerce for the sale of the goods identified in those registrations since as early as June 1999.

4. Applicant is seeking to obtain, under the provisions of the Trademark Act of 1946, as amended, registration upon the Principal Register of Applicant's Mark.

5. Applicant's Mark was published for opposition in the Official Gazette of March 22, 2016.

6. Applicant's Mark contains word elements that are identical or closely similar to the Opposer's Registered Marks.

7. Applicant's Mark duplicates distinctive characteristics of the Opposer's Registered Marks.

8. Applicant's Mark creates an overall commercial impression identical to Opposer's Registered Marks.

9. Applicant's Mark is confusingly similar to Opposer's Registered Marks.

10. Applicant's Mark is used in connection with the sale of goods that are identical to, or related in some manner to, goods that are identified in the PTO registrations for Opposer's Registered Marks and that are sold by Opposer using Opposer's Registered Marks such that the goods are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source

11. Applicant's Mark creates the immediate and erroneous suggestion and impression that goods sold under Applicant's Mark are goods that originate with, are endorsed by, are compatible with, or are otherwise connected to Opposer.

12. Upon information and belief, the goods, identified in the application for Applicant's Mark, are and will be marketed under conditions such that they are likely to be encountered by the same purchasers of Opposer's goods, sold using Opposer's Registered Marks, and under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that the goods originate from the same source.

13. Upon information and belief, the customers of and the channels of distribution employed by Opposer and Applicant are likely to be similar, even overlapping, adding to the likelihood that the goods sold by Applicant under Applicant's Mark will be confused with the Opposer's goods, sold using Opposer's Registered Marks.

14. Upon information and belief, the classes of purchasers to whom Opposer and Applicant will sell will be the same, adding to the likelihood that consumers intent on purchasing Opposer's goods sold using Opposer's Registered Marks will purchase Applicant's

goods sold under the Applicant's Mark under the mistaken impression that they originate with, are endorsed by, or are otherwise connected to Opposer.

15. The similar nature of the marks themselves, the related goods and the trade channels and customers for those goods are so great as to create a likelihood of confusion among consumers as to the source of Applicant's goods or Applicant's affiliation or relationship with, or sponsorship by, Opposer.

16. Such confusion resulting from Applicant's intended use and the requested registration of Applicant's Mark, will damage Opposer.


17. Applicant's mark is merely a surname.

18. Applicant's Mark should be barred from registration, pursuant to 15 U.S.C. § 1052(d), because Applicant's Mark consists of a mark which so resembles Opposer's Registered Marks in use in U.S. interstate commerce, that Applicant's Mark is likely, when used on or in connection with the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

19. WHEREFORE, Opposer requests that its Opposition be sustained, that the registration of Applicant's Mark be refused, and that Application Serial No. 86-609635 be rejected.

Dated this 5th day of July, 2016.

BBK TOBACCO & FOODS, LLP



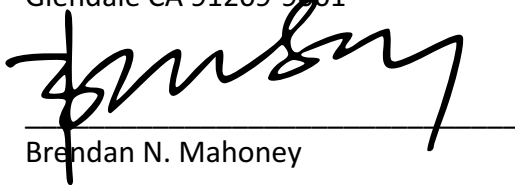
Brendan N. Mahoney
3401 West Papago Street
Phoenix, AZ 850009

GENERAL COUNSEL FOR OPPOSER

CERTIFICATION

I certify that a copy of the foregoing Petition for Cancellation was sent this 5th day of July 2016 via United States mail, postage prepaid, to:

David A. Plumley
Lewis Roca Rothgerber Christie LLP
PO BOX 29001
Glendale CA 91209-9001



Brendan N. Mahoney